

**REMARKS**

Claims 1-13 were previously pending in the application. By the Amendment, Claim 1 is currently amended, new Claims 14-20 have been added, and Claims 2-13 remain unchanged. Applicants gratefully acknowledge the Examiner's allowance of Claims 12-13 and indication that Claims 7-9 include allowable subject matter.

Claims 1-2, 4-6 and 10-11 were rejected under 35 USC §102(b) as being anticipated by Mertz (US 410,911). Claims 1-2, 4-6 and 10-11 were rejected under 35 USC §102(b) as being anticipated by Graves (US 1,767,976). Claims 1 and 10-11 were rejected under 35 USC §102(b) as being anticipated by Canio (US 1,204,347). Claim 3 was rejected under 35 USC §103(a) as being unpatentable over Mertz. Claim 3 was rejected under 35 USC §103(a) as being unpatentable over Graves.

Independent Claim 1 recites a refrigerator, comprising: a housing having a cooled interior space; at least one drawer disposed in said interior space for storing bottles; said at least one drawer having a frame with two opposite sides; and said at least one drawer having a plurality of rods to be releasably mounted parallel to and spaced apart from one another between said two opposite sides of said frame at selectable distances from one another, the rods supporting the bottles on the drawer.

Mertz discloses a refrigerator having a drawer (C) that is adapted to slide in and out along slides (B). The drawer (C) includes longitudinal strips (a) holding the ends of the drawer together and rods (b) held at their ends in the longitudinal strips (a).

Mertz does not disclose, among other things, a "drawer having a plurality of rods to be releasably mounted parallel to and spaced apart from one another between said two opposite sides of said frame at selectable distances from one another," as recited in Claim 1. Rather, Mertz discloses the rods (b) mounted in a fixed position between the strips (a). Mertz clearly states that the rods (b) are "held at their ends *in* the bottom strips." (see page 1, lines 51-52) (emphasis added) Fig. 3 also illustrates the rods (b) extending into the strips (a). Because the strips (a) are fixed in position with the ends of the drawer, removing the rods (b) from the strips (a) would require breaking the parts and ruining the function of the drawer. Therefore, the rods (b) of Mertz are not *releasably* mounted.

In the Office action dated December 19, 2005, the Examiner states, "that the rods are deemed to be releasably mounted since the prior art does not expressly state that the rods are permanently affixed to the sides." This is not supported by the disclosure of

Mertz. As described above, the disclosure of Mertz indicates that the rods (b) are permanently fixed within the strips (a). Even if Mertz was silent on the issue, this is still not the standard for patentability. According to 35 USC 102(b), a person shall be entitled to a patent *unless* the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States. The burden is on the Examiner to show that each and every element of the claim is shown in the reference. If the Examiner cannot satisfy this burden, the Applicants are entitled to a patent. The Examiner is attempting to prove a positive based on the lack of the negative. Even if the Mertz did not expressly state the rods (b) were permanently affixed, this does not support the assumption that they are releasably mounted. Furthermore, this does not satisfy the burden under 35 USC 102(b). Each and every element of Claim is not disclosed in Mertz and the Applicants respectfully request reconsideration of the rejection of Claim 1 based on Mertz.

For these and other reasons, Mertz does not disclose the subject matter defined by independent Claim 1. Therefore, Claim 1 is allowable. Claims 2-11 depend from Claim 1 and are allowable for the same reasons and also because they recite additional patentable subject matter.

Graves discloses a milk shipping cabinet having multiple drawers (12). The drawers (12) are formed with reticulated bottoms (19) and are divided longitudinally and transversely with reticulated partition members (20) defining bottle receiving pockets (21). The bottles are placed within the pockets (21) and are supported by the bottoms (19).

Graves does not disclose, among other things, a “drawer having a plurality of rods to be releasably mounted parallel to and spaced apart from one another between said two opposite sides of said frame at selectable distances from one another, the rods supporting the bottles on the drawer,” as recited in Claim 1. Once again, the Examiner makes the assumption that the partition members (20) are releasably mounted because the reference does not expressly state that they are permanently fixed. Graves does not support this assumption and nothing in the reference teaches or suggests that the partition members (20) are releasably mounted.

To the contrary, it would be more desirable if the partition members (20) were permanently fixed. Graves discloses a shipping container for milk bottles. It would be more desirable to have the partition members (20) permanently fixed to provide a more rigid and durable shipping container that holds the bottles in place during shipping. As shown in Fig. 3, all the pockets (21) appear to be sized uniformly for receiving the milk bottles. Releasing and moving one of the partition members (20) would destroy the uniform spacing of all the pockets (21) and allow the milk bottles to slide around during shipping.

In Graves, the partition members (20) appear to be positioned near a middle portion of the drawer. As shown in Fig. 2, the partition members (20) intersect the middle of the front and back walls of the drawer. The drawings indicate that the partition members (20) extend into the walls of the drawer and are permanent affixed to the walls to support the partition member (20). If the partition members (20) were releasably mounted, there would have to be some type of additional structure or mechanism to support the partition members (20) along the side surfaces of the walls and allow them to be released. Graves does not disclose any such structure or mechanism. Therefore, if anything, Graves suggests that the partition members (20) are permanently mounted.

Also, Graves does not disclose the rods supporting the bottles on the drawer. In Graves, the bottles are supported by the reticulated bottom (19), not the partition members (20). Therefore, all the elements of Claim 1 are not shown in Graves.

For these and other reasons, Graves does not disclose the subject matter defined by independent Claim 1. Therefore, Claim 1 is allowable. Claims 2-11 depend from Claim 1 and are allowable for the same reasons and also because they recite additional patentable subject matter.

Canio discloses a refrigerator having a box (10) and multiple drawers (14). The drawer includes a body having two sides and a bottom portion extending between the sides. A partition (23) extends between the sides over the bottom portion and may be adjustable to form desired compartments in each drawer.

Canio does not disclose, among other things, a “drawer having a plurality of rods to be releasably mounted parallel to and spaced apart from one another between said two opposite sides of said frame at selectable distances from one another, the rods supporting the bottles on the drawer,” as recited in Claim 1. Rather, Canio discloses the drawers

with the body and bottom portions that the support items within the drawers. The partitions (23) merely help define compartments within the drawer to help keep items separated from one another. As stated in Canio, "it will be seen from Fig. 1 that the panel 21 rises considerably above the body of the drawer so that when articles are disposed on the latter between its partitions they do not ordinarily rise high enough to be struck by the top of the opening 17 as the drawer is withdrawn." (page 2, lines 63-69) The articles in Canio are supported on the *body of the drawer*, not the partitions. Canio also teaches that the articles are positioned *between* the partitions, not on the partitions.

Canio provides extensive description how each drawer provides its own cooling zone that is designed to keep air from flowing between the zones when a drawer is opened. This also indicates that each drawer body has a solid body on which the articles are supported. Therefore, all the elements of Claim 1 are not shown in Canio.

For these and other reasons, Canio does not disclose the subject matter defined by independent Claim 1. Therefore, Claim 1 is allowable. Claims 2-11 depend from Claim 1 and are allowable for the same reasons and also because they recite additional patentable subject matter.

New independent Claim 18 recites a refrigerator, comprising: a housing having a cooled interior space; a drawer for storing items slidably supported by the housing for movement with respect to the housing and including a frame having a front profile end, a rear profile end, and lateral rails extending along sides of the frame between the front and rear profile ends; a first rod and a second rod releasably mounted to the frame and extending between the front and rear profile ends in a direction substantially parallel to one another, the first rod being movable with respect to the frame between a first position and a second position, the distance between the first and second rods when the first rod is in the first position being different than the distance between the first and second rods when the first rod is in the second position, the rods supporting the items on the drawer.

The prior art, particularly Mertz, Graves and Canio, does not disclose a refrigerator as recited in Claim 18. More specifically, the prior art does not disclose, among other things, a first rod and a second rod releasably mounted to the frame and extending between the front and rear profile ends in a direction substantially parallel to one another, the first rod being movable with respect to the frame between a first position and a second position, the distance between the first and second rods when the first rod is

in the first position being different than the distance between the first and second rods when the first rod is in the second position, the rods supporting the items on the drawer.

Therefore, Applicants respectfully request allowance of independent Claim 18. Claims 19-20 depend from Claim 18 and should be allowed for the same reasons and also because they recite additional patentable subject matter.

### **CONCLUSION**

In view of the above, entry of the present Amendment and allowance of Claims 1-20 are respectfully requested. If the Examiner has any questions regarding this amendment, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Craig J. Loest", with a stylized flourish at the end.

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